HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1140(S/S) of 2005

Smt. Hema Kandpal
Vs
Cantonment Board Nainital

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 2/2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1140 of 2005 (SS)

Smt. Hema Kandpal wife of Sri R.C. Kandpal
Cantt. Quarter No. 5, Tallital,
Nainital ..... Petitioner

Versus

1. Cantonment Board, Nainital
2. The Executive Officer,
Cantonment Board, Nainital ..... Respondents

Sri Manoj Tiwari, Advocate for the petitioner

Sri Tribhuwan Phartiyal & Dharmendra Barthwal, Advocate for the respondents.

Dated: March 22,2006

Hon'ble Rajesh Tandon, J.

Heard Sri Manoj Tiwari counsel for the petitioner and Sri Tribhuwan Phartiyal and Sri Dharmendra Barthwal counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of Mandamus directing the respondents to pay salary and other allowances for the post of Head Mistress to the petitioner with effect from 1.4.2003 along with all consequential benefits.

Further a writ of mandamus has been prayed commanding the respondents to issue statement of account and certificate in form No. 16 of the Income Tax Act, regarding deduction of income tax at source and also G.P.F. slip to the petitioner up to the year 2004.

Briefly stated the petitioner was appointed as Assistant Teacher on 2.4.1990 in Primary School, Cantonment, Nainital which is being run by respondent no. 1 After retirement of Km.

Uma Sah, the petitioner had become entitled for promotion as Head Mistress on 1.4.2003 but the claim of the petitioner was not considered while she was continuously discharging her duties as Head Mistress w.e.f. 1.4.2003 till 31.8.2004. Ultimately the petitioner was promoted on the post of Head Mistress on 1.9.2004. The petitioner has claimed that since she has discharged the duties of Head Mistress for a period of one and half year, she is entitled to get the salary of Head Mistress and other consequential benefits.

The respondents filed counter affidavit and admitted that the petitioner was appointed as Assistant Teacher in Primary School, Cantt. Board, Nainital. They have also admitted that the post of Head Mistress became vacant after the retirement of Km. Uma Sah on 31.3.2003 but the same could not be filled up without prior approval from the Directorate of Defence Estate. The Cantonment Executive Officer, on receiving the application of the petitioner for promotion dated 8.9.2003 had already placed the matter before the meeting of the Board on 12.12.2003, wherein vide resolution No. 24 dated 12.12.2003, it was resolved that a proposal would be submitted to the Principal Director, Defence Estates, Central Command, Lucknow to get the sanction of promotion of the petitioner. Which was sent on 19.1.2004. The Principal Director, Defence Estates, Lucknow accorded approval to fill up the post of the Head Mistress on 22.4.2004. The matter was placed before the Board who passed resolution on 24.8.2004 and the petitioner was promoted to the post of Head Mistress on 1.9.2004. The

respondents have submitted that all outstanding dues to the petitioner have been paid.

The petitioner has submitted that she worked on the post of Head Mistress from 1.4.2003 to 31.8.2004 in an officiating capacity by the order of competent authority. Petitioner filed copy of the order dated 24th March 2003, annexure-1 to the writ petition, in which it has been mentioned that Km. Uma Sah, Head Mistress will be retired on 31.3.2003, Copy of the order was endorsed to Smt. Hema Kandpal with the direction to take over all paper and materials relating to the school from retiring Head Mistress Km. Uma Sah. In that order although there is no mention that Smt. Hema Kandpal will work on the post of Head Mistress as substantive or temporary capacity but she took over charge from the retiring Head Mistress and worked as Head Mistress in officiating capacity from 1.4.2003 to 1.9.2004. The petitioner was entitled for being promoted on the post of Head Mistress after the retirement of Km. Uma Sah on 31.3.2003 as she fulfils all the required qualifications for the post of Head Mistress but due to the time consumed in the official procedure she could be promoted on the post of Head Mistress only on 1.9.2004, therefore, she is entitled to get salary and allowances of the post of Head Mistress from 1.4.2003 to 31.8.2004, in view of the principal of law laid down in Jaswant Singh vs. Punjab Poultry Field Staff Association (2002) 1 SCC 261. The Apex Court has observed as under:

"*The High Court's decision in Gobind Singh case did not direct the promotion of Gobind Singh. What was directed was the payment of salary and allowances of the post of Chick Sexer since Gobind Singh had been discharging the duties of*

that post. Therefore, while the appellant's promotion to the post of Chick Sexer cannot be upheld, given the fact that the appellant had discharged the duties of a Chick Sexer, he was at least entitled to the pay and other allowances attributable to that post during the period he carried out such duties.

We accordingly allow the appeal in part. While upholding the order of the High Court, setting aside the order of the appellant's promotion, we direct the respondent Authorities to pay the appellant for the period he rendered service as a Chick Sexer at the scales of pay together with all allowances to which Chick Sexers were entitled at the relevant time."

Thus the petitioner is entitled to get salary and other allowance of the post of Head Mistress for the period she worked on that post on officiating capacity prior to her actual promotion.

So far as the grievance of the petitioner regarding not providing details of her salary, G.P.Fund deduction and certificate in Form No. 16 of the Income Tax Act, is concerned, it need not to be mentioned that it is incumbent upon the Drawing and Disbursing Authority to make available all such information to the employees. In case details of salary, G.P. Fund and deduction of tax at source are not made available to the petitioner liberty is given to her to make complaint to the Principal Director of Defence Estate, Central Command, Lucknow and I hope and trust that the Authority will consider the same in accordance with law.

In view of above, a writ of mandamus is issued directing the respondents to pay salary and allowances to the petitioner for the post of Head Mistress from 1.4.2003 to 31.8.2004 within

a month after obtaining certified copy of this order. Respondents are also directed to make available details of salary, G.P. Fund and issue certificate in Form No. 16 for deduction of tax at source regularly for each financial year.

Accordingly, the writ petition is allowed. No order as to costs.

Dated: March 22, 2006 **Rajesh Tandon, J.**

*Dhyani